

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Attorney Docket No. 004770.00025

In re U.S. Patent Application of)	
Walsh, <i>et al.</i>)	
)	Examiner: Ramsey Refai
Application No. 10/027,048)	
)	Group Art Unit: 2152
Filed: December 20, 2001)	
)	
For: Cluster Filtering)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is responsive to the Final Office Action mailed on August 11, 2006. A Notice of Appeal and a request for a one month extension of time is filed concurrently with this request for review. The Commissioner is authorized to debit or credit our Deposit Account 19-0733 accordingly for any fees that are owed or for any overpayment that has been made.

Discussion and Argument

The Final Office Action mailed August 11, 2006 (Final Action) rejected claims 1-9 and 11-26 under 35 U.S.C. § 102(b), ¶ 1 as being anticipated by U.S. Patent No. 5,951,651 to Lakshman *et al.* (Lakshman). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Lakshman. As noted in the Interview Summary mailed December 7, 2006, it was agreed that the rejection under 35 U.S.C. § 112 would be withdrawn. Therefore, only the rejections based on Lakshman remain.

Before addressing the propriety of the rejection, as noted in the Response Mailed June 5, 2006 (Response), pg. 7-8, Lakshman discloses using a bit-mapped vector to indicate which rules, which may filter a range of IP values, are applied to particular sections of the header. However, there is no mention in Lakshman that the rules themselves are fixed in length or have an offset value.

Turning to claim 1, the following is recited:

1. A device for filtering data, wherein the data is formatted in a packet having discrete segments, the device comprising:
 - a mapping module that contains control logic for performing steps comprising:
 - (a) receiving an identification of at least two clusters of the discrete segments of data; and
 - (b) selecting at least two fixed length filters from a plurality of fixed length filters to filter the at least two clusters, wherein each of the selected at least two fixed length filters has an offset value corresponding to a beginning of one of the at least two clusters.

As noted in the Response Mailed June 5, 2006 (Response), pg. 8, Lakshman fails to disclose fixed length filters. The Final Action, pg. 2 admits that Lakshman does not expressly discuss the use of fixed length filters. The Final Action, pg. 2, suggests however, that Lakshman does teach filters that meet the scope of the claim. Therefore, the Final Action is suggesting that fixed length filters are inherent to the system of Lakshman.

In support of the suggestion that Lakshman inherently meets the claim limitations, the Final Action, pg. 2, points to Figure 3 as well as Col. 3, Ln. 35-56 and Col. 2, Ln. 22-38. As the Response, pg. 8, explains, Figure 3 shows how a bit-mapped vector works. The Final Action, pg. 2-3, admits the bit-mapped vector is not a filter, thus the

functionality of a bit-mapped vector is not helpful in supporting the showing of an allegedly inherent feature of the rules of Lakshman. As noted in the Response, pg. 8, the discussion of the filters in Lakshman, Col. 3, Ln. 35-56 merely indicates that rules (which are being read as filters) may apply to a range of values and makes no mention that the rules themselves are fixed in length. Thus, none of the cited sections support the suggestion that Lakshman inherently uses fixed length filters. Therefore, the cited sections of Lakshman do not support the Final Action's rejection. In other words, the fact that a rule may apply to a particular range of values does not address the length of the rule itself and certainly fails to support the idea that the rule necessarily has a fixed length.

In addition, as noted in the Response, pg. 8, Lakshman fails to disclose "wherein each of the selected at least two fixed length filters has an offset value corresponding to a beginning of one of the at least two clusters." The Final Action, pg. 5, points to Lakshman, Col. 4, 28-47 as allegedly supporting the disclosure of fixed length filters with an offset. However, this section refers to bit-mapped vectors, which the Final Action admits is not a filter. Thus, the reasoning used in the Final Action is logically inconsistent and cannot be fairly said to support the arguments made in the Final Action. Applicants note that while the rules themselves could apply to a particular value (a particular IP address, for example), this is not plainly not the same thing as "an offset value corresponding to a beginning of one of the at least two clusters." In other words, the range of values that a rule may filter is not the same thing as the section of the header that the rule is being applied against.

Independent claims 12, 18 and 23 also recite the fixed length filter feature. In addition, claim 23 recites a feature regarding the offset of the filters which is similar to the feature discussed above with respect to claim 1. Thus, the independent claims are not anticipated by Lakshman for at least the above reasons provided in the discussion of the features of claim 1. The remaining pending claims depend from one of the claims 1, 12, 18 and 23 and therefore are not anticipated by Lakshman for at least the reasons discussed above and for the additional features recited therein.

Regarding claim 10, the Final Action, pg. 7, admits that Lakshman fails to disclose the use of the DVB-T protocol but argues it would be obvious to use DVB-T

protocol because it would allegedly allow for efficient routing of quality audio and video data. However, as noted in the Response, pg 10, no support has been provided that the method of Lakshman would be suitable for use with any video protocol, let alone DVB-T protocol, thus there is no support for this combination and the complexity of method used by Lakshman suggests that the Lakshman method would be less suitable for use with video transmission protocols such as DVB-T, thus a person of skill in the art would not be motivated to use the method Lakshman with DVB-T protocol. *See Dystar Textilfarben GMBH & Co. Deutschland KG. v. C.H. Patrick Co.*, 464 F.3d 1356, 1366 (Fed. Cir. 2006) (citing *In re Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002) and noting that “[c]onclusory statements such as those here provided do not fulfill the agency's obligation’ to explain all material facts relating to a motivation to combine.”).

In summary, Applicants respectfully submit that all the rejections have been addressed and that all claims are in condition for allowance. Accordingly, an indication of allowability of all pending claims is requested.

Respectfully submitted,

Date: December 11, 2006

By: /Stephen L. Sheldon/
Stephen L. Sheldon
Registration No. 58,732

BANNER & WITCOFF, LTD.
10 South Wacker Drive
Suite 3000
Chicago, Illinois 60606
Telephone: 312-463-5000
Facsimile: 312-463-5001